

REMARKS

Claims 1-10 are pending in above-identified application. Claims 6-8 and 10 have been amended in order to correct minor formal errors. In addition, claims 6 and 7 have been amended so as to clearly recite that the product of the processes in these claims is that of the compounds of formula I of claim 1. These changes are completely formal in nature and introduce no new substantive issues, such that all of these changes should be entered of record and considered by the Examiner.

Request for Entry of Claim Amendments

It is respectfully requested that all of the above-noted claim amendments be entered of record under 37 CFR 1.116(b), since all of these changes are completely formal in nature, introduce no new substantive issues, and at least place the present claims into better form.

Unity of Invention Issues

It is respectfully requested that presently withdrawn claims 6, 7, 9 and 10 be considered by the Patent Examiner and that the previous Unity of Invention Requirement be withdrawn. Regarding process claims 6 and 7, it is respectfully requested that these claims comply with the "re-joinder" requirements under MPEP 821.04(b) (Rev. 5, Aug. 2006, pp. 800-69 to 800-70). As noted above, claims 6 and 7 properly include all of the limitations for the recited product which includes compounds of formula I as recited in claim 1.

Regarding Claim 9, it is submitted that this claim is essentially directed to a "composition" product which includes a compound of formula I according to claim 1, such that the patentability of claim 9 depends upon the patentability of the compounds of formula I. No additional substantive examination is required with regard to claim such that there is no undue burden placed on the Examiner. Regarding claim 10, the same is essentially true. Claim 10 is directed to a method of using the compounds of formula I according to claim 1, such that the patentability of this claim essentially depends upon the patentability of the compounds of formula I and no

additional substantive examination issues arise in connection with this claim such that there is no additional burden placed on the Examiner to also consider this claim. Further still, claims 9 and 10 should be considered in view of the Unity of Invention "Administrative Instructions under the PCT". Specifically, Annex B, Unity of Invention, Rev. 6, Sept. 2007, pp. AI-58 to AI-59 in the MPEP. Section (e) indicates that the Applicant is entitled to combinations of different categories of claims, which includes additional independent claims directed to the use of a claimed product. Consequently, it is requested that all of the presently pending claims be considered and that the previous Unity of Invention Requirement be withdrawn.

Removal of Double Patenting Issues

Claims 1-5 and 8 have been rejected based on obviousness type double patenting as being unpatentable over each of: [1] claim 1 of Blasco '061 (US Serial No. 10/590,368 published as US 2007/0179061); and [2] Blasco '408 (US Serial No. 10/589,953 published as US 2007/0173408). In order to remove this rejection, submitted with this Amendment are two Terminal Disclaimers with respect to each of these applications. Consequently, it is requested that these rejections be withdrawn.

It is submitted for the reasons above that the present claims define patentable subject matter such that this application should now be placed in condition for allowance.

If any questions arise in the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: November 5, 2008

Respectfully submitted,

By 

Andrew D. Meikle

Registration No.: 32,868

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant